

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WALTER DUANE WHITE,

Plaintiff,

v.

CRIMINAL NO. 1:06CV81
(Judge Keeley)

JOYCE FRANCIS, Warden,

Defendant.

ORDER AFFIRMING REPORT AND RECOMMENDATION AND
DISMISSING COMPLAINT WITHOUT PREJUDICE

On May 22, 2006, the Court received a letter from *pro se* plaintiff Walter Duane White alleging that he had not received adequate medical care while incarcerated at the Federal Correctional Institution in Gilmer County, West Virginia. The Court construed that letter as a civil rights complaint pursuant to 42 U.S.C. § 1983 and, on May 24, 2006, opened a case on White's behalf. By standing Order, the Court referred this matter to United States Magistrate Judge James E. Seibert.

After receiving several additional correspondences from the plaintiff, the magistrate judge conducted an initial review of White's claims. On June 15, 2006, Magistrate Judge Seibert issued a report and recommendation (R&R) recommending that White's complaint be dismissed without prejudice for failure to exhaust his administrative remedies. In his R&R, the magistrate judge thoroughly outlined the Prison Litigation Reform Act's ("PLRA's") mandatory exhaustion provision and the Bureau of Prisons' ("BOP's")

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three step administrative remedy process applicable in this case. From a review of the record, Magistrate Judge Seibert concluded that White had only completed step one of the mandatory three step procedure prior to filing his complaint.

On June 30, 2006, White filed a response to the R&R. Nowhere in that response did White object to the findings of the magistrate judge. Rather, he concurred that he had not exhausted his administrative remedies and advised the Court that he would "file again" after he completed the administrative review process. (Doc. No. 10 at 2.)

There being no objection, the Court **ADOPTS** Magistrate Judge Seibert's R&R and **DISMISSES** this case **WITHOUT PREJUDICE** from its docket. Accordingly, the *pro se* plaintiff is advised that, if necessary, he may re-file his claims after he has properly exhausted the available administrative remedies.

It is so **ORDERED**.

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The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: April 13, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE